



**Request for City Council Committee Action
From the Department of Public Works**

Date: May 6, 2003
To: Honorable Sandra Colvin Roy, Chair Transportation & Public Works Committee

Subject: Public Hearing to Adopt Amendments to the Minneapolis Code of Ordinance related to authorization of Public Works employees to use the Administrative Enforcement and Hearing Process.

Recommendation:

1. Passage of a Resolution adopting Amendments to Chapters 2, 95, 429 and 430 of the Minneapolis Code of Ordinance that adds language authorizing the use of Chapter 2, Administrative Enforcement and Hearing Process for code violations related to use of the public rights of way.

Previous Directives:

- February 28, 2003. Ordinance Introduction for Chapter 95, 429 and 430 – Directed staff to prepare a schedule of civil and administrative penalties.

Prepared by: Dennis Morris, Right of Way Supervisor, Engineering Services, 673 3607

Approved by: Klara A. Fabry, Director of Public Works

Paul W. Ogren, P.E., Director, Engineering Services

Presenters: Dennis Morris, Right of Way Supervisor

Financial Impact (Check those that apply)

☒ No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)

- ☐ Action requires an appropriation increase to the Capital Budget
- ☐ Action requires an appropriation increase to the Operating Budget
- ☐ Action provides increased revenue for appropriation increase
- ☐ Action requires use of contingency or reserves
- ☐ Other financial impact (Explain):

☐ Request provided to the Budget Office when provided to the Committee Coordinator

Background/Supporting Information Attached:

Ordinance Changes

On February 28th, the City Council introduced ordinance and directed staff to prepare appropriate changes to the Municipal Code that would permit Public Works employees to issue violation notices and impose fines as it relates to Chapters 95, 429 and 430. These notices and fines would be imposed when a person or business encroached onto public right of way without obtaining the required permits or consent of the City of Minneapolis. This direction from Committee was a direct response to an incident in which a building contractor had installed an earth retention system in a public alley without obtaining the necessary permits.

Upon staff research of existing Municipal Code it was determined that an existing Code, Chapter 2, Administrative Fines, was suitable to accomplish to results that the Committee wished to achieve. These changes have been reviewed and approved by the City Attorneys Office. Ordinance introduction amending Chapter 2 was to be introduced at the May 2 City Council meeting. By adding language to Chapter 2 authorizing specific Public Works employees to issue violation notices and fines, and modifying Chapters 95 (Encroachments), 429 (Right of Way Administration) and 430 (Right of Way Permits) specific Public Works employees will be empowered to exercise stricter control over activities within the public rights of way.

Amending the Schedule of Fines

Chapter 2.70 of the Code requires the City Council to set a schedule of civil fines that defines the Ordinance violation and monetary fine to be levied. This fine would be in addition to any requirement to correct the code violation. Staff is currently researching what code violations should be subject to the fine and what monetary amount should be collected. It is expected that the schedule will be completed and submitted to the committee in the near future.

Appropriation Increase

The implementation of this newly created enforcement authority will require additional activity by the designated employees. At this time we are unable to determine the specific extent of those activities. There are nine existing Full Time Employees that will be authorized to perform these new tasks: three in the Right of Way Section, five in the Utility Connections Section and the Right of Way Engineer who manages both sections. Staff is proposing that we implement the new process and monitor any resulting additional costs. If there are any budgetary impacts, staff will present a request at a future date for a budgetary adjustment.

Attachment 1 - Existing Chapter 2, Administrative Enforcement.

Attachment 2 - Proposed language changes to existing Ordinances.

Cc: Ed Backstrom, Attorney's Office

T&PW - Your Committee recommends adoption of the accompanying resolution adopting text amendments to Chapters 2, 95, 429 and 430 of the Minneapolis Code of Ordinances that will allow the Public Works Department to utilize the Administrative Enforcement and Hearing Process (Chapter 2) in regulating and controlling activities within the public rights of way of the City.

Resolution

Amending Title 1, Chapter 2; Title 5, Chapter 95 and Title 17, Chapters 429 and 430 of the Minneapolis Code of Ordinances by adding language that authorizes the Public Works Department to use the Chapter 2 Administrative Enforcement and Hearing Process.

The City Council of the City of Minneapolis do ordain as follows:

That the Minneapolis Code of Ordinances be hereby amended by adding thereto the following text changes:

(Amend)

Chapter 2.20. Persons authorized to issue citations. The following city employees are authorized to issue citations for violations of the Minneapolis Code of Ordinances:

- (1) Police officers.
- (2) Animal control officers.
- (3) License inspectors.
- (4) Fire chief, fire marshal and fire inspectors.
- (5) Building inspectors.
- (6) Manager of environmental health and environmental health inspectors.
- (7) Housing inspectors.
- (8) Zoning inspectors.
- (9) Traffic Control Agent II for violations of Title 13, Chapter 341.
- (10) Sidewalk inspectors. (2001-Or-104, § 1, 9-14-01)

(11) Utility Connection Inspectors and their supervisor.

(12) Real Estate Investigators and their supervisor.

(Amend)

95.10. Permit required for encroachment; liability; expiration. No portion of a building or other structure, including but not limited to steam lines, conduits, lighting standards, areaways, retaining walls, parking bays, etc., but excluding signs, as stated in Chapter 109, shall for any length of time encroach upon or project into, upon, over or under any street or alley, right-of-way, park or other public property without a special permit having been issued by the city clerk, except as specifically stated in this code, and the owner of any structure any part of which encroaches on, into, upon, over or under any public property shall be liable to the city for any damage which may result to any person or property by reason of such encroachment or the removal of such encroachment whether or not such encroachment is specifically allowed by this Code.

Any permission hereunder granted and all rights of the permittee hereunder shall cease at any time that said encroachment shall be removed and such permission shall in no way be considered a relinquishment by the city of that portion of said public right-of-way, or be of any force or effect beyond the time herein provided. Additional conditions may be imposed on encroachment permits to protect the health, safety or welfare of the public or to protect nearby property owners from hardship or damage or to protect other public interests as determined by the director of public works or the appropriate elected official.

(New)

Chapter 95.25 Enforcement Failure to comply with the provisions of this Chapter may result in permit cancellation, administrative fines, restrictions or penalties as provided in Chapters 2, 429 and 430 of this Code.

(New)

Chapter 429.60.. Enforcement Failure to comply with the provisions of this Chapter may result in permit cancellation, administrative fines, restrictions or penalties as provided in Chapters 2, 429 and 430 of this Code.

(Amend)

Chapter 429.200. Franchise holder exemption. In the instance of a person holding a franchise agreement with the city, and a conflict in language occurs between the franchise and Chapters 429 and/or 430, the conflict shall be resolved by honoring the terms of the franchise. Further, in the instance of a person holding a franchise agreement with the city, which provides for the payment of franchise fees to the city, such person shall be exempt from paying any other fees or costs except administrative fines as provided for in Chapter 2 and the disruptive cost as required by Chapter 430

(New)

Chapter 430.35 Enforcement Failure to comply with the provisions of this Chapter may result in permit cancellation, administrative fines, restrictions or penalties as provided in Chapters 2, 429 and 430 of this Code.

Attachment 1

Existing Chapter 2 Ordinance

CHAPTER 2. ADMINISTRATIVE ENFORCEMENT AND HEARING PROCESS

2.10. Purpose. Pursuant to City Charter Chapter 4, Section 5, the city council enacts this Article of the Minneapolis Code of Ordinances to provide an administrative enforcement and hearing process for the resolution of certain violations of the Minneapolis Code of Ordinances. The council finds that an administrative enforcement and hearing process will facilitate compliance with certain provisions of this Code and avoid unnecessary delay in the enforcement of the Minneapolis Code of Ordinances.

2.20. Persons authorized to issue citations. The following city employees are authorized to issue citations for violations of the Minneapolis Code of Ordinances:

- (1) Police officers.
- (2) Animal control officers.
- (3) License inspectors.
- (4) Fire chief, fire marshal and fire inspectors.
- (5) Building inspectors.
- (6) Manager of environmental health and environmental health inspectors.
- (7) Housing inspectors.
- (8) Zoning inspectors.
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2.30. Alternative methods of enforcement. This administrative enforcement procedure provides for an alternative method for the city to gain compliance with provisions of the Code prior to any formal criminal or civil court action. The administrative enforcement and hearing process provided for in this chapter will be in addition to any other legal or equitable remedy available to the city for Code violations, except that if a determination is made by the hearing officer, pursuant to the hearing process detailed in section 2.100 of this chapter, that a violation did not occur, the city may not then proceed with criminal prosecution for the same act or conduct.

2.40. Offenses subject to administrative enforcement. A violation of the following provisions of the Minneapolis Code of Ordinances is an administrative offense that may be subject to the administrative enforcement and hearing process of this Article:

- 1) Title 4 Animals and Fowl
- (2) Title 5 Building Code
- (3) Title 9 Fire and Police Protection
- (4) Title 10 Food Code
- (5) Title 11 Health and Sanitation
- (6) Title 12 Housing
- (7) Title 13 Licenses and Business Regulations
- (8) Title 14 Liquor and Beer
- (9) Title 15 Offenses--Miscellaneous
- (10) Title 17 Streets and Sidewalks
- (11) Title 18 Traffic Code
- (12) Title 20 Zoning Code

2.50. Orders to correct; administrative citations. Upon the reasonable belief that an offense detailed in section 2.40 of this chapter has occurred, the city officials listed in section 2.20 of this chapter may serve on the violator an order to correct the violation or may issue a citation for the violation. If compliance is not achieved by an order to correct, the official is authorized to issue an administrative citation pursuant to this chapter of the Code. An administrative citation must be served on the alleged violator. The administrative citation must state the date, time, and nature of the offense, the name of the official issuing the citation, the amount of the scheduled civil fine, and the manner for paying the fine or appealing the citation by requesting a mediation and hearing.

2.60. Civil fines. The administrative offenses detailed in section 2.40 may be subject to a civil fine. Civil fines may not be imposed for ordinance violations that prohibit the same conduct that is classified as a crime or petty misdemeanor in Minnesota Statutes, Chapters 168, 168A, 169, 170, 171 and 609.

2.70. Schedule of civil fines. The city council will adopt by resolution a schedule of civil fines for administrative offenses. City officials enforcing this chapter must adhere to this schedule of fines.

Attachment 2

Proposed Changes to the Minneapolis Code of Ordinances

(Amend)

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Any permission hereunder granted and all rights of the permittee hereunder shall cease at any time that said encroachment shall be removed and such permission shall in no way be considered a relinquishment by the city of that portion of said public right-of-way, or be of any force or effect beyond the time herein provided. Additional conditions may be imposed on encroachment permits to protect the health, safety or welfare of the public or to protect nearby property owners from hardship or damage or to protect other public interests as determined by the director of public works or the appropriate elected official.

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